IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5283 OF 2005

Smt.Rukmini Gururajdhar Machale ...Petitioner

V/s.

Shri.Papabhai Rahman Shaikh ... Respondent

Shri.V.S. Talkute for the Petitioner.
Shri.P.J. Shinde for the Respondent.

CORAM : V.M. KANADE, J.

DATED : 5th MARCH, 2007.

P.C. :-

1. Heard learned counsel for the Petitioner and learned counsel for the Respondent.

2. The learned counsel for the Petitioner takes exception to the order passed by Executing Court who has rejected the application for dismissal of execution proceedings on the ground of limitation.

3. The Petitioner is original landlord. He has filed suit for

eviction of respondent who was tenant. In this proceedings, consent terms was filed by both the parties and the Petitioner in the consent terms had categorically admitted that tenancy of the respondent/ tenant would be kept intact and that he would give new shop in the newly constructed building. However, since the Petitioner did not own commitment which he had given in the compromised terms, tenant filed execution proceedings. In this execution proceedings, plea which is taken by the petitioner is that execution proceedings are barred by limitation since they are filed beyond period of three years and that the provisions of Article 135 of Limitation Act would apply to the facts of the present case.

4. Tenant on the contrary submitted that provisions of Article 136 would apply which prescribes period of limitation as 12 years. Trial Court after perusing consent terms and the relevant provisions has rejected the application of the Petitioner.

5. Learned counsel for the Petitioner has submitted that what is mentioned in the consent terms is that the Petitioner would

construct new shop for the tenant which clearly shows that it was a positive act which was supposed to be undertaken by the landlord and therefore, it was in the nature of mandatory injunction and therefore, provisions of Article 135 of Limitation Act were clearly applicable.

6. It is not possible to accept the submissions led by the learned counsel for the Petitioner. I have perused the consent terms. In the consent terms, landlord has specifically agreed that tenancy would be kept intact and therefore, new shop would be constructed and given to tenant. Article, therefore, which is applicable is clearly Article 136 of Limitation Act. There is no reason to interfere with the impugned order.

. Writ Petition is accordingly dismissed.

V.M. KANADE, J.